

STATE OF MAINE
HARNESS RACING COMMISSION

In re Haley Farken)
Case No. 2024-MSHRC-01)
&)
Zachary Vickerson)
Case No. 2024-MSHRC-02)

DECISION AND ORDER

I. PROCEDURAL HISTORY

Pursuant to the authority found in 10 M.R.S. Section 8003(5-A), the State of Maine Harness Racing Commission (“Commission”) met in public session on August 21, 2024, in Room 101 at the Deering Building, 90 Blossom Lane, Augusta, Maine. The purpose of the meeting was to determine whether to impose discipline upon the license of Haley Farken (“Licensee Farken”) as an owner and Zachary Vickerson (“Licensee Vickerson”) as an owner/driver/trainer.

By letter dated May 9, 2024, the hearing in this matter was scheduled for June 17, 2024. On May 16, 2024, a Scheduling Order was issued explaining the hearing process and setting deadlines for the submission of information prior to the hearing. On May 28, 2024, a prehearing conference was held. A Conference Order was issued on May 30, 2024. The request of Licensee Vickerson to continue the hearing date was granted without objection. On June 18, 2024, a Scheduling Order was issued modifying deadlines consistent with the new hearing date of August 21, 2024.

A quorum of the Commission was in attendance during all stages of the proceedings. Prior to the start of the hearing, the Commission considered and rejected a proposed Consent Agreement. The parties agreed that no Commission Member created a conflict of interest by considering the proposed Consent Agreement and subsequently participating in the hearing.

Participating and voting Commission Members were Don Marean; Patricia Varnum; Chandler Woodcock; and Chair Harry Center, II. Licensee Vickerson was present and was

represented by Craig Rancourt, Esq. Licensee Farken was present and represented by William Childs, Esq. John Belisle, Esq., Assistant Attorney General, represented Commission Staff. Rebekah Smith, Esq., served as Presiding Officer pursuant to a contract with the Commission. The hearing was held in accordance with the requirements of the Maine Administrative Procedure Act, 5 M.R.S. Section 9051 to Section 9064. The Commission made its determinations by a preponderance of the evidence.

Commission Staff Exhibits #1A to #17, Licensee Farken Exhibits #1 to #6 and #8 to #12,¹ and Licensee Vickerson Exh. #1 were admitted without objection. The Commission took notice of its statutes and rules and confirmed that no participating member had any conflict of interest or bias that would prevent him or her from rendering an impartial decision in this matter. Each party made an opening statement. Commission Staff presented the following witnesses: Licensee Vickerson; Shane Bacon, Executive Director of the Commission; Miles Greenleaf, Agricultural Program Supervisor for the Commission; and Licensee Farken. All testimony was taken under oath. Each party presented a closing statement. The Commission then deliberated and made the following findings of fact and conclusions of law by a preponderance of the credible evidence regarding the allegations against the Licensees.

II. FINDINGS OF FACT

Licensure. On May 10, 2023, Licensee Vickerson was granted an owner/driver/trainer license by the Commission. (Commission Staff Exh. #2b.) On August 29, 2023, Licensee Farken was granted an owner license by the Commission. (Commission Staff Exh. #2a.)

In approximately August 2022, Licensee Vickerson and Licensee Farken began dating. (Commission Staff Exh. #4; Testimony of Vickerson.) On December 9, 2023, Licensee Vickerson left Maine to move to New York. (Commission Staff Exh. #4; Testimony of Vickerson.) The

¹ Licensee Farken Exhibit #7 was withdrawn.

romantic relationship between Licensee Vickerson and Licensee Farken ended around that time although they continued to communicate regularly and they owned other horses together.

(Commission Staff Exh. #4; Testimony of Vickerson.)

Death of Crush Me. As of December 9, 2023, Licensee Farken was the owner of a horse named Crush Me, having purchased the horse in approximately mid-November 2023. (Board Staff Exh. #3a & #9; Testimony of Farken.) Licensee Vickerson was the trainer of record for Crush Me. (Commission Staff Exh. #3b & #9.)

Before he left for New York, Licensee Vickerson recommended to Licensee Farken that she scratch Crush Me from a December 10 race due to a bowed tendon on one leg and a bad suspensory on the other leg. (Commission Staff Exh. #4; Licensee Farken Exh. #8 & 9; Testimony of Vickerson.) He determined that Crush Me was not sound to race. (Commission Staff Exh. #4.) Licensee Vickerson felt he had informally designated Licensee Farken to be Crush Me's trainer upon his move out of Maine. (Commission Staff Exh. #4.) He did not know if there was any official protocol on transferring the training designation of a horse to its owner. (Testimony of Vickerson.)

On December 10, 2023, Licensee Vickerson was in Pine Bush, New York. (Commission Staff Exh. #4.) Licensee Vickerson had entered Crush Me into a race on December 10, 2023, at the Cumberland Raceway. (Testimony of Farken.) She had determined that despite Licensee Vickerson's suggestion that Crush Me not be raced, she would warm Crush Me up on December 10 and make her own decision. (Testimony of Farken.) Licensee Farken considered herself to be Crush Me's trainer as of December 10. (Testimony of Farken.) Licensee Farken intended to get a trainer's license but still needed to pass an eye exam. (Testimony of Farken.) She had asked Licensee Vickerson to remain Crush Me's trainer until she could complete the requirements to get licensed as a trainer. (Testimony of Farken.)

The morning of December 10, a snowstorm occurred. (Testimony of Farken; Licensee Farken Exh. #10.) Because of the snowstorm, Crush Me was transported from Sidney to the Cumberland Raceway earlier than planned and Licensee Farken accidentally left behind the bridle she needed to race Crush Me. (Testimony of Farken.) Licensee Farken left the Cumberland Raceway to meet her mother in Topsham to retrieve the bridle. (Testimony of Farken; Commission Staff Exh. #13.)

Licensee Farken called Licensee Vickerson at approximately 9:11 a.m. to report that Bobby Marston had called her to tell her that Crush Me was down; she was not on site; and she thought that Crush Me was dead. (Testimony of Vickerson; Commission Staff Exh. #13.) When Licensee Farken got back to the Cumberland Raceway at approximately 9:30 a.m. she was informed that Crush Me had died. (Testimony of Farken.) She chose not to see Crush Me's body and she did not participate in his removal from the fairgrounds. (Testimony of Farken.) She knew that Crush Me had to be removed before rigor mortis set in. (Testimony of Farken.)

At approximately 3:00 p.m. on December 10, Licensee Farken called Licensee Vickerson again, confirming the death of Crush Me. (Testimony of Vickerson; Commission Staff Exh. #13.) Licensee Farken indicated to Licensee Vickerson that Crush Me had been removed from the grounds on Allison McDonald's trailer. (Testimony of Farken.) Licensee Vickerson did not report Crush Me's death to Commission Staff or to anyone on site at the Cumberland Raceway. (Testimony of Vickerson.)

Crush Me was scheduled to race in race #5 at Cumberland Raceway on Sunday, December 10, 2023. (Commission Staff Exh. #8.) State veterinarian Zack Matzkin scratched Crush Me after being asked to do so by Licensee Farken. (Commission Staff Exh. #8; Testimony of Vickerson.) Dr. Matzkin reported the scratch to paddock judge Brenda Brown at approximately 10:00 a.m.

(Commission Staff Exh. #8.) Ms. Brown conveyed the scratch to Presiding Judge Frank Dubreuil.

(Commission Staff Exh. #8; Commission Staff Exh. #9.)

At 2:15 p.m. on Sunday, December 10, 2023, Licensee Farken texted a colleague in the barn to throw her wagon over to the Vickerson's barn since she had left it elsewhere when Crush Me went down. (Commission Staff Exh. #7.) At 4:06 p.m., Licensee Farken's mother texted her to ask if Crush Me had won the race. (Commission Staff Exh. #7.) Licensee Farken responded that the horse had a heart attack and died. (Commission Staff Exh. #7.)

The death of Crush Me should have been reported by the trainer of record that day to the state veterinarian who was on site at Cumberland Raceway. (Testimony of Bacon.) The veterinarian could have taken a blood sample and evaluated Crush Me to ensure nothing out of the ordinary had occurred. (Testimony of Bacon.)

Commission Investigation. On December 16, 2023, the Commission received an anonymous tip regarding a possible horse death at the Cumberland Raceway. (Commission Staff Exh. #8; Testimony of Bacon.)

At 11:50 a.m. on December 19, 2023, Commission Executive Director Shane Bacon called Licensee Farken to inquire about the whereabouts of Crush Me. (Commission Staff Exh. #8.) Licensee Farken reported that she had sold the horse to the Amish after she scratched him from his December 10, 2023, race due to lameness. (Commission Staff Exh. #8.) Executive Director Bacon informed Licensee Farken that he needed to see the paperwork related to the transaction and to obtain the contact information for the purchaser of Crush Me. (Commission Staff Exh. #8.) Licensee Farken responded that the horse's trainer, Licensee Vickerson, had handled all of the paperwork and she had nothing to do with the sale. (Commission Staff Exh. #8.) Licensee Farken called Licensee Vickerson on December 19, 2023, to indicate that Executive Director Bacon had contacted her about Crush Me's death. (Testimony of Vickerson; Commission Staff Exh. #13.)

Executive Director Bacon considered any attempt he made to collect information related to the death of Crush Me to be pursuant to a Commission proceeding. (Testimony of Bacon.)

At 11:54 a.m., on December 19, 2023, Executive Director Bacon called Licensee Vickerson and left a message. (Commission Staff Exh. #8.) Licensee Vickerson did not return Executive Director Bacon's call. (Commission Staff Exh. #8; Testimony of Bacon.) At 8:04 a.m. on December 20, 2023, Executive Director Bacon called Licensee Vickerson again but got no response. (Commission Staff Exh. #8.)

At 8:30 a.m. on December 21, 2023, Executive Director Bacon called Licensee Farken again to retrieve the information about Crush Me and left a message. (Commission Staff Exh. #8.) At 10:56 a.m. on December 21, 2023, Licensee Vickerson returned Executive Director Bacon's previous messages. (Commission Staff Exh. #8.) He stated that he left Maine at 8:00 a.m. on December 9 to go to New York and his recommendation had been to scratch Crush Me from the December 10 race due to being lame. (Commission Staff Exh. #8.) Licensee Vickerson stated that he had no knowledge of Crush Me being sold to the Amish or to anyone. (Commission Staff Exh. #8.)

At 11:10 a.m. on December 21, 2023, Executive Director Bacon called Licensee Farken again and informed her of his conversation with Licensee Vickerson. (Commission Staff Exh. #8.) Ms. Farken then reported that she brought Crush Me to Cumberland to race the morning of December 10, 2023, and put the horse in a stall at Licensee Vickerson's barn on the track. (Commission Staff Exh. #8.) She stated that she needed to leave the track because she was meeting her mother to collect some equipment she had left behind. (Commission Staff Exh. #8.) Licensee Farken stated that because Crush Me was going to be late for his Lasix treatment, she called Allison MacDonald to ask him to bring Crush Me to the Lasix administration area. (Commission Staff Exh. #8.) Allison McDonald then asked Frank Hiscock to bring Crush Me for his Lasix treatment.

(Commission Staff Exh. #8.) Licensee Farken admitted that she scratched Crush Me after the horse had died. (Commission Staff Exh. #8.) Licensee Farken acknowledged that the death of Crush Me should have been reported. (Testimony of Greenleaf.)

At 11:30 a.m. on December 21, 2023, Executive Director Bacon called Frank Hiscock who reported that he went to Crush Me's stall in Mr. Vickerson's barn to take the horse to its Lasix treatment appointment but when he took Crush Me out of his stall, he collapsed and died.

(Commission Staff Exh. #8.) At 1:00 p.m. on December 21, 2023, Allison MacDonald confirmed that Licensee Farken called him the morning of December 10 to ask him to take Crush Me to his Lasix treatment but he was on the track so he asked Mr. Hiscock to get Crush Me. (Commission Staff Exh. #8.) Mr. MacDonald indicated that when he later saw Licensee Farken after she had retrieved the equipment she needed she was distraught and he offered her his trailer to transport Crush Me to the compost plant. (Commission Staff Exh. #8.) Mr. MacDonald noted that three others helped him load Crush Me onto the trailer for transport. (Commission Staff Exh. #8.) Later on December 21, Chris Lefebvre and Bob Marston confirmed to Executive Director Bacon they had helped load Crush Me onto the trailer after the horse had died. (Commission Staff Exh. #8.)

Crush Me's death was not reported to any Commission official. (Commission Staff Exh. #8.)

On December 21, 2023, Licensee Vickerson submitted an email to the Commission stating that he stopped training Crush Me on Friday, December 8, 2023, at which time the horse was too lame to race. (Commission Staff Exh. #5.) Licensee Vickerson indicated that when he left Maine on Saturday, December 9, 2023, to move to New York, he was under the assumption that Crush Me would not be racing. (Commission Staff Exh. #5.) He stated that when he watched the races on Saturday, December 10, 2023, he noticed that Crush Me had been scratched and thought nothing of it because that was the original plan. (Commission Staff Exh. #5.)

On December 22, 2023, Executive Director Bacon called Ms. Farken to schedule an interview for January 2, 2024. (Commission Staff Exh. #8.) Ms. Farken's interview was subsequently cancelled when she obtained legal counsel. (Commission Staff Exh. #8.)

By letters dated January 22, 2024, the Commission requested additional information from Licensee Farken and Licensee Vickerson regarding the circumstances surrounding the death of Crush Me. (Commission Staff Exh. #3a & 3b.) The Commission also issued investigative subpoenas to Licensee Farken and Licensee Vickerson. (Commission Staff Exh. #6.)

On February 9, 2024, Licensee Vickerson provided a response to the Commission's request for information. (Commission Staff Exh. #4.) He stated that he first learned of the death of Crush Me via a phone call from Licensee Farken on December 19, 2023. (Commission Staff Exh. #4.)

On February 14, 2024, Mr. Marston reported to Executive Director Bacon that he had seen Crush Me drop to the ground, he went to check on the horse and realized he was dead, and he contacted Ms. Farken to inform her of the death of Crush Me at the time the horse was scheduled to receive Lasix, approximately 9:08 a.m. (Commission Staff Exh. #8.) Also on February 14, 2024, Executive Director Bacon contacted Mr. Vickerson to inquire if he wanted to retract or change his responses to the complaint, to which Mr. Vickerson responded that he would think about it. (Commission Staff Exh. #8; Testimony of Bacon.) On February 19, 2024, Licensee Vickerson submitted a revised statement acknowledging that Licensee Farken called him at approximately 9:00 a.m. on December 10 to inform him that Crush Me was down and that later that day she informed him that Crush Me had died. (Commission Staff Exh. #4 & #4a.)

Licensee Vickerson was banned from the Cumberland Raceway until the resolution of this matter. (Testimony of Bacon.) Neither Licensee Vickerson nor Licensee Farken submitted applications to renew their licenses for 2024. (Testimony of Bacon.)

III. GOVERNING STATUTES AND RULES

1. The Commission may impose discipline upon a licensee who engages in conduct that may adversely reflect on the honesty and integrity of horse racing. 01-017 C.M.R. Ch. 1, § 10(1-A)(8).
2. The Commission may impose discipline upon a licensee who fails to disclose relevant information or makes a false statement in connection with a proceeding before the Commission. 01-017 C.M.R. Ch. 1, § 10(1-A)(11).
3. A horse that expires or suffers a breakdown on a licensed racetrack and is destroyed, shall undergo a postmortem examination if the Commission Veterinarian and State Steward determine that it is necessary. 01-017 C.M.R. Ch. 1, § 20.
4. The Commission may impose discipline upon a licensee who fails to promptly report the death of a horse in his care at a location under the jurisdiction of the Commission to the State Steward and the Department Veterinarian and by failing to ensure compliance with Commission Rule Chapter 1, Section 20. 01-017 C.M.R. Ch. 11, § 3(E)(6).
5. As a sanction for a violation of a Commission rule for which no penalty is specified, the Commission may impose a fine not to exceed \$1,000 and/or a one-year suspension. 01-017 C.M.R. Ch. 17, § 1).

IV. CONCLUSIONS OF LAW

The Commission, considering the above facts and those alluded to in the record but not referred to herein, concluded that it had jurisdiction over Haley Farken and Zachary Vickerson and found as follows with regard to the allegations against each licensee by unanimous vote.

1. Licensee Farken engaged in conduct that adversely reflected on the honesty and integrity of horse racing by providing false information to the Executive Director of the Commission during their phone call on December 19, 2023.

2. Licensee Farken failed to disclose relevant information and made a false statement in connection with a proceeding before the Commission when she falsely informed the Executive Director on December 19, 2023, that Crush Me had been sold to the Amish when she knew that Crush Me had died on December 10, 2023.
3. Licensee Vickerson made a false statement in connection with a proceeding before the Commission when he responded to the Notice of Complaint on February 9, 2024, that he did not report Crush Me's death because he was not informed of the horse's death until December 19, 2023, when in fact he had been informed of the horse's death on December 10, 2023.
4. Licensee Vickerson failed to promptly report the death of a horse in his care at a location under the jurisdiction of the Commission to the State Steward and the Department Veterinarian and failed to ensure compliance with Commission Rule Chapter 1, Section 20, when he did not report the December 10, 2023, death of Crush Me, for whom he was the trainer of record.

As sanctions for the violations committed by Licensee Farken, the Commission imposed a penalty of a \$500 fine, payable within 5 days, and a 45-day suspension. The Commission noted that Licensee Farken fabricated a story about Crush Me's death when speaking to Executive Director Bacon on December 19, 2023, and she had engaged in suspect communications to Licensee Vickerson throughout the course of Executive Director Bacon's investigation. The Commission also noted that Licensee Farken had gone against Licensee Vickerson's recommendation not to race Crush Me on December 10, 2023, even though he was the horse's trainer of record. Finally, the Commission considered the mitigating factors that it was Licensee Farken's first offense and she likely was panicked at the time that Executive Director Bacon contacted her on December 19.

As a sanction for the violations committed by Licensee Vickerson, the Commission imposed a penalty of a \$500 fine, payable within 5 days, and a 10-day suspension.² The Commission noted that Licensee Vickerson initially misrepresented the truth regarding when he learned of Crush Me's death although he eventually provided truthful answers to Executive Director Bacon. The Commission also noted the mitigating factors that it was Licensee Vickerson's first violation, he was not in Maine on the day of Crush Me's death, and he had recommended that the horse not race that day.

The effective date of this Decision and Order is the date on which it is signed by the Commission Chair.

Dated: Nov. 4, 2024


Henry Center, II, Chair
State of Maine Harness Racing Commission

V. APPEAL RIGHTS

Pursuant to the provisions of 10 M.R.S. Section 8003(5-A) and 5 M.R.S. Sections 11001 to 11003, any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30 days of receipt of this Decision and Order. The petition shall specify the person seeking review, the manner in which they are aggrieved, and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought, and a demand for relief. Copies of the Petition for Review shall be served by certified mail, return receipt requested, upon the State of Maine Harness Racing Commission, all parties to the agency proceedings, and the Attorney General.

² Neither Licensee objected to the Commission's imposition of a suspension even though neither Licensee had an active license at the time of hearing.